



4191-02U P

## **SOCIAL SECURITY ADMINISTRATION**

**[Docket No. SSA-2018-0011]**

### **Social Security Ruling, SSR 18-02p; Titles II and XVI: Determining the Established Onset Date (EOD) in Blindness Claims**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are providing notice of SSR 18-02p, which rescinds and replaces the following sections of SSR 83-20, “Titles II and XVI: Onset of Disability,” – (1) “Title II: Blindness Cases,” and (2) “Title XVI—Specific Onset is Necessary,” as it applies to blindness claims. Specifically, this SSR addresses how we determine the EOD in blindness claims under titles II and XVI of the Social Security Act (Act). We concurrently published a separate SSR, SSR 18-01p, “Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims,” which rescinded and replaced all other parts of SSR 83-20. Therefore, SSR 83-20 is completely rescinded and replaced by SSR 18-01p and SSR 18-02p.

**DATES:** We will apply this notice on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, (410) 597-1632, Dan.OBrien@ssa.gov. For information on eligibility or filing for benefits, call our national toll-free number at 1-800-772-1213, or visit our internet site, Social Security online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are publishing it in accordance with 20 CFR 402.35(b)(1).

We use SSRs to make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made in our administrative review process, Federal court decisions, decisions of our Commissioner, opinions from our Office of the General Counsel, or other interpretations of law and regulations.

Although SSRs do not have the force and effect of law, they are binding on all components of the Social Security Administration in accordance with 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the Federal Register that rescinds it, or until we publish a new SSR in the Federal Register that rescinds and replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security--Disability Insurance; 96.002, Social Security--Retirement Insurance; 96.004, Social Security--Survivors Insurance; 96.006, Supplemental Security Income.)

**Nancy A. Berryhill,**

*Acting Commissioner of Social Security.*

## POLICY INTERPRETATION RULING

### TITLES II AND XVI: DETERMINING THE ESTABLISHED ONSET DATE (EOD) IN BLINDNESS CLAIMS

We are providing notice of SSR 18-02p which rescinds and replaces the following sections of SSR 83-20: “Titles II and XVI: Onset of Disability,” – (1) “Title II: Blindness Cases,” and (2) “Title XVI—Specific Onset is Necessary,” as it applies to blindness claims. Concurrently, we published a separate SSR, SSR 18-01p, “Titles II and XVI: Determining the Established Onset Date (EOD) in Disability Claims,” which rescinded and replaced all other parts of SSR 83-20. Therefore, as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the date this SSR was published in the Federal Register, SSR 83-20 is completely rescinded and replaced by SSR 18-01p and SSR 18-02p.

**PURPOSE:** This SSR explains how we determine the EOD in blindness claims under titles II and XVI of the Social Security Act (Act).

**CITATIONS:** Sections 216, 220, 223, 1602, 1611, and 1614 of the Act, as amended; P.L. 108-203, 118 STAT. 535; 20 CFR 404.110, 404.130, 404.303, 404.315-.316, 404.320-.321, 404.335-.336, 404.350-.351, 404.1505, 404.1510, 404.1512, 404.1572, 404.1581-.1584, 416.202, 416.305, 416.912, 416.981-.984.

## POLICY INTERPRETATION:

To be entitled to disability insurance (DI) benefits under title II of the Act or eligible for Supplemental Security Income (SSI) payments under title XVI of the Act based on blindness, a claimant must file an application, meet the relevant statutory definition(s), and satisfy the applicable non-medical requirements. If we find that a claimant meets the relevant statutory definitions and meets the applicable non-medical requirements during the period covered by his or her application, we then determine the claimant's EOD. The EOD is the earliest date that the claimant meets both the relevant definitions and non-medical requirements during the period covered by his or her application.

### Outline

- I. What is the EOD?
  - A. What is the statutory definition of blindness?
  - B. What are the statutory definitions of disability for blind claimants and when do they apply?
    - 1. What is the statutory definition of disability for a title II blind claimant who is younger than 55?

2. What is the statutory definition of disability for a title II blind claimant who is age 55 or older?
  - C. What are the non-medical requirements?
- II. What are some special considerations related to the EOD?
- A. What if a claimant meets all the requirements for DI benefits or SSI payments based on blindness and based on another impairment?
  - B. What happens when a claimant applies for DI benefits under title II and meets the statutory definition of blindness, but continues to work?
- III. When is this SSR applicable?

### Discussion

- I. What is the EOD?

For title II blindness claims, the EOD is the earliest date that the claimant meets the statutory definitions of blindness and disability<sup>1</sup> and the applicable non-medical requirements<sup>2</sup> for entitlement to benefits during the period covered by his or her application. For title XVI blindness claims, the EOD is the earliest date that the claimant meets the statutory definition of blindness<sup>3</sup> and the applicable non-medical requirements<sup>4</sup> for eligibility for SSI payments during the period covered by his or her application.

A. What is the statutory definition of blindness?

Titles II and XVI of the Act define blindness as central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. We consider an eye to have a central visual acuity of 20/200 or less when it has a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.<sup>5</sup> Under title XVI of the Act, an individual may also be considered blind if he or she: (1) was found blind under a State plan approved under title X or XVI of the Act as in effect

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<sup>1</sup> 42 U.S.C. 416(i)(1)(B) (defining blindness), 423(d)(1)(A) (defining disability for blind individuals younger than age 55), 423(d)(1)(B) (defining disability for statutorily blind individuals age 55 and older); 20 CFR 404.1581 (defining blindness), 404.1582 (explaining how we determine a period of disability based on blindness), 404.1583 (explaining how we determine disability for blind persons who are age 55 or older).

<sup>2</sup> See, e.g., 20 CFR 404.315, 404.316, 404.320, 404.321 (setting forth some of the non-medical requirements for title II DI benefits), 20 CFR 404.335, 404.336 (same for title II disabled widow(er)'s benefits (DWB)), 20 CFR 404.350, 404.351 (same for title II childhood disability benefits (CDB)).

<sup>3</sup> 42 U.S.C. 1381a ("Every aged, blind, or disabled individual who is determined . . . to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Commissioner of Social Security") (emphasis added), 1382(a) (defining an eligible individual), 1382c(a)(2) (defining blindness); 20 CFR 416.981 (defining blindness), 419.982 (explaining when we will consider an individual to be blind based on a State plan).

<sup>4</sup> See, e.g., 20 CFR 416.202, 416.305 (setting forth some of the non-medical requirements for title XVI SSI payments).

<sup>5</sup> 42 U.S.C. 416(i)(1)(B), 1382C(a)(2); 20 CFR 404.1581, 416.981.

for October 1972; (2) received aid under that plan because of blindness for December 1973; and (3) continues to be blind as defined under that plan.<sup>6</sup>

B. What are the statutory definitions of disability for blind claimants and when do they apply?

A claimant who seeks DI benefits under title II based on blindness must show that he or she meets the statutory definition of blindness as well as the statutory definition of disability during the period under consideration.<sup>7</sup> A claimant who seeks SSI payments under title XVI based on blindness need only show that he or she meets the statutory definition of blindness during the period under consideration.<sup>8</sup> Title II of the Act defines disability differently for those who are younger than age 55 and those who are age 55 or older.

1. What is the statutory definition of disability for a title II blind claimant who is younger than 55?

For claimants who meet the statutory definition of blindness during the period under consideration and are younger than age 55, the Act defines disability as the

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<sup>6</sup> 42 U.S.C. 1382c(a)(2); 20 CFR 416.982.

<sup>7</sup> 42 U.S.C. 423(d)(1)(A), (B); 20 CFR 404.1512(a), 404.1582, 404.1583.

<sup>8</sup> 42 U.S.C. 1381a (“Every aged, blind, or disabled individual who is determined . . . to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Commissioner of Social Security”) (emphasis added), 1382(a) (defining an eligible individual); 20 CFR 416.912 (providing that, in general, a claimant must prove to us that he or she is blind), 416.981 (defining blindness), 416.982 (explaining when we will consider an individual to be blind based on a State plan).



inability to engage in any substantial gainful activity (SGA)<sup>9</sup> by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>10</sup>

2. What is the statutory definition of disability for a title II blind claimant who is age 55 or older?

For claimants who meet the statutory definition of blindness during the period under consideration and are age 55 or older, the Act defines disability as the inability by reason of such blindness to engage in SGA requiring skills or abilities comparable to those of any gainful activity in which the claimant has previously engaged with some regularity and over a substantial period of time.<sup>11</sup>

C. What are the non-medical requirements?

A claimant is not entitled to DI benefits or eligible for SSI payments based on blindness unless he or she meets the applicable non-medical requirements. The non-medical requirements—such as the insured status requirements under title II and the income and resource limitations under title XVI—vary based on the type(s) of claim(s)

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<sup>9</sup> 20 CFR 404.1510 (defining SGA as significant and productive physical or mental duties done (or intended) for pay or profit), 404.1572 (providing further details about what we mean by SGA); see also 42 U.S.C. 423(d)(4)(A), 20 CFR 404.1584 (collectively describing how to calculate SGA for claimants who meet the statutory definition of blindness).

<sup>10</sup> 42 U.S.C. 423(d)(1)(A).

<sup>11</sup> Id. at (d)(1)(B).

the claimant filed. To illustrate, we identify below the most common types of claims and some of the regulations that explain the non-medical requirements for that type of claim.

- DI Benefits: 20 CFR 404.315, 404.316, 404.320, 404.321;
- Disabled Widow(er)'s Benefits (DWB): 20 CFR 404.335, 404.336;
- Childhood Disability Benefits (CDB): 20 CFR 404.350, 404.351; and
- SSI: 20 CFR 416.202, 416.305.

II. What are some special considerations related to the EOD?

A. What if a claimant meets all the requirements for DI benefits or SSI payments based on blindness and based on another impairment?

If a claimant meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on blindness, and also meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on another impairment, we will establish two EODs. One EOD will be for the first date the claimant meets all the requirements for entitlement to DI benefits or eligibility for SSI payments based on blindness, and the other will be for the first date the claimant meets all the requirements based on the other impairment. The EOD for the other impairment may be before or after the EOD for blindness.

B. What happens when a claimant applies for DI benefits under title II and meets the statutory definition of blindness, but continues to work?

If a claimant applies for DI benefits under title II and meets the insured status requirements<sup>12</sup> and the statutory definition of blindness, but continues to work (even at the SGA level), we may establish a period of disability for him or her. A period of disability must last for at least five consecutive, full calendar months.<sup>13</sup> If we establish a period of disability, we “freeze” the claimant’s earnings during that period and will not use them to compute cash benefits (unless it advantages the claimant) or to determine whether the claimant still has insured status.<sup>14</sup> However, a period of disability, or disability freeze, does not automatically entitle the claimant to monthly cash benefits.<sup>15</sup> To be entitled to monthly cash benefits, the claimant must still meet the statutory definitions of blindness and disability and the applicable non-medical requirements during the period covered by his or her application.

For purposes of determining the EOD, if we find that the claimant meets the insured status requirements and the statutory definition of blindness, but he or she is performing SGA, we will establish up to two dates. First, we will establish a disability freeze date, which is the date the claimant first met the insured status requirements and the statutory definition of blindness. If the claimant later stops working or his or her

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<sup>12</sup> 20 CFR 404.110 (describing how we determine fully insured status and explaining that an individual needs at least six quarters of coverage but not more than 40 quarters of coverage to be fully insured), 404.130(e) (explaining that a claimant is insured in a quarter for purposes of establishing a period of disability or becoming entitled to DI benefits if in that quarter the claimant meets the statutory definition of blindness and is fully insured).

<sup>13</sup> 20 CFR 404.320(a), (b)(4) (explaining that “[a] period of disability is a continuous period of time during which you are disabled” and that one of the requirements to be “entitled to a period of disability . . . [is that a]t least 5 consecutive months go by from the month in which [the claimant’s] period of disability begins and before the month in which it would end”).

<sup>14</sup> 42 U.S.C. 420; 20 CFR 404.1582.

<sup>15</sup> 20 CFR 404.1582.

work is no longer SGA, we will establish a second date called the “adjusted blind onset date” (ABOD). The ABOD is the date the claimant stopped performing SGA and became entitled to monthly cash benefits under title II of the Act, subject to a five-month waiting period.

The five-month waiting period begins with the first full month that the claimant does not perform SGA. However, if the claimant is age 55 or older and performing SGA, we consider how the claimant’s work activity compares with work he or she did in the past.<sup>16</sup> We consider work to be non-comparable if it requires skills and abilities that are less than or different from those the claimant used in the work he or she did in the past.<sup>17</sup> If the claimant is age 55 or older and performing “non-comparable” SGA, we will count the months the claimant performs “non-comparable” SGA in the waiting period if they also fall within the period of disability.

We cannot establish a disability freeze for DWB or CDB claimants under title II of the Act. There is also no freeze equivalent for SSI claimants under title XVI of the Act. However, to be eligible for SSI payments based on disability under title XVI, a claimant need only meet the statutory definition of blindness and the applicable non-medical requirements. Thus, a claimant seeking SSI payments based on blindness need not show that he or she is unable to perform SGA, but if the claimant is working, we will

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<sup>16</sup> 20 CFR 404.1584(c).

<sup>17</sup> Id.

consider his or her earnings under the income and resource rules of title XVI of the Act.<sup>18</sup>

When a claimant's income or resources exceed the Act's limitations, he or she is ineligible for SSI payments under title XVI because he or she does not meet the applicable non-medical requirements,<sup>19</sup> even though the claimant meets our statutory definition of blindness.<sup>20</sup>

### III. When is this SSR applicable?

This SSR is applicable on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. We will use this SSR beginning on its applicable date. We will apply this SSR to new applications filed on or after the applicable date of the SSR and to claims that are pending on and after the applicable date. This means that we will use this SSR on and after its applicable date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses our final decision and remands a case for further administrative proceedings after the applicable date of this SSR, we will apply this SSR to the entire period at issue in appropriate cases when we make a decision after the court's remand.

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<sup>18</sup> 20 CFR 416.983(b), 416.984.

<sup>19</sup> 20 CFR 416.202(c), (d) (explaining that to be eligible for SSI payments, a claimant may not have "more income than is permitted" or "more resources than are permitted").

<sup>20</sup> 20 CFR 416.984.

